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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/733,847

12/08/2000

Liang C. Dong

ARC 2644 R1

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30766 7590 07/27/2006

DEWIPAT INCORPORATED

P.O. BOX 1017

CYPRESS, TX 77410-1017

EXAMINER

FAY, ZOHREH A

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Period for Reply

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1) ☒ Responsive to communication(s) filed on 24 April 2006.
2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) ☒ Claim(s) 53,55 and 58-74 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 53,55 and 58-74 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. ____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

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Claims 53, 55 and 58-74 are presented for examination.

The remarks filed on April 26, 2006 have been received and entered.

Claims 53, 55 and 58-74 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Rudinic et al. (U.S. 5,952,004) in view of Ekenhoff et al. (4,692,326) and further over Al-Razzak et al. (U.S. Patent 5,559,158) for the reasons set forth on pages 2-4 of the office action of January 19, 2006 and the following reasons. Al-Razzak et al. teach the use of the claimed anti-viral agents in combination with the claimed poly sorbates, such as polyoxyethylene (20) sorbitan monolaurate in a pharmaceutical formulation in a capsule form. See the abstract, column 2, and column 5, lines 30-44. The above reference teaches the claimed antiviral agents in combination with the claimed surfactants in a pharmaceutical formulation. The use of the term "consisting" does not create a patentably distinct composition, considering that claim 53 also uses "comprising". Furthermore, the prior art clearly teaches the use of the claimed designated poly sorbates in combination with the claim-designated antiviral agents in a pharmaceutical formulation. The new use for an old composition does not create a patentably distinct composition in the absence of evidence to the contrary. Applicant's attention is drawn to In re Dillon, 16 USPQ 2nd 1897 at 1900 (CAFC 1990). The court sitting in banc ruled that the recitation of a new utility for an old composition does not render that composition new.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh A. Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z.F

